

43 Fed. Reg. 29508 (July 7, 1978). This statement provides a clearly indication of the Secretary's intent in promulgating the filing regulations and is not inconsistent with the language of Part 40.

In footnote 3 of the decision the Commission further observed:

The Part 40 filing requirements were not promulgated merely to identify miners' representatives for section 103(f) purposes. As the preamble to Part 40 noted, the Act "requires the Secretary of Labor to exercise many of his duties under the Act in cooperation with miners' representatives." 43 Fed. Reg. 29508 (July 7, 1978). Filing under Part 40 serves, among other things, to identify such representatives that they will be included in the processes contemplated by the Act. See, e.g., sections 101(e), 103(c), 103(g), 105(a), 105(b), 105(d), 107(b), 107(e), 109(b), 305(b).

3 FMSHRC at 618, 619

In the Consol case the operator was well aware of who the UMWA safety representatives were and why they were at the mine. Likewise, in the instant case, international representative Rabbitt was well known to Emery's management.

For the foregoing reasons, I conclude that the mere failure of representative Rabbitt to file under 30 C.F.R. Part 40 does not authorize the operator to deny access under § 103(f).

#### Briefs

The parties have filed pre-trial and post-trial briefs which have been most helpful in analyzing the record and defining the issues. However, to the extent they are inconsistent with this decision, they are rejected.

#### Conclusions of Law

Based on the entire record and the factual findings made in the narrative portion of this decision, the following conclusions of law are entered:

1. The Commission has jurisdiction to decide this case.
2. Contestant failed to meet its burden of proof to establish that Citation 2834575 should be vacated.
3. The contest of Citation 2834575 should be dismissed.